

The 3rd February, 1995

No. 14/13/87-6Lab./118.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s United Steel and Alloys Industries, Bahadurgarh *versus* Ved Parkash:—

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 17 of 1991

SHRI VED PARKASH, S/O SHRI CHANDER SINGH, C/O SHRI RAM PHUL, VFO SANKHOL,
DISTT. ROHTAK .. *Workman*

And

THE M/S UNITED STEEL AND ALLOYS INDUSTRIES, BAHADURGARH .. *Management*

Present :

Workman in persons.

Shri M. Kaushal, A. R. for the management.

AWARD

In exercise of powers conferred by Sub-Clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—vide Labour Department Encl. No. SOV/ID/Roh/17-91/4414—19, dated 18th February, 1991 :—

Whether the termination of services of Shri Ved Parkash is justified and in order ? If not, to what relief is he entitled ?

2. The Workman and the management were summoned. The workman appeared and filed the statement of claim that he has been working according to rules and regulations in the respondent factory w.e.f. 2nd December, 1985 but on 6th April, 1990, without service of notice, chargesheet, showcause notice he was turned out of the factory by 3.30 P. M. The workman had been coming to the factory regularly from 7th April, 1990 to 30th April, 1990 but he was never allowed to enter in the factory. The workman had sent the letters, dated 7th April, 1990, 9th April, 1990, 10th April, 1990, 11th April, 1990, 12th April, 1990, 13th April, 1990, 14th April, 1990 and 16th April, 1990 but he was not allowed to work and hence this claim state was filed that he is liable to be reinstated with continuity of service and with full back wages and all other resultant benefits.

3. The management filed the written statement that services were terminated by the management on 6th April, 1990 without any notice or information and he was reporting on duty from 7th April, 1990 to 20th April, 1990 but he was not allowed to report for work. Whereas all these facts contended by the applicant are misleading one and facts that he has started absenting from duty of his own on 6th April, 1990 a notice as per usual practice was given to him asking him to report for work. Another notice was sent to him on 14th April, 1990 but the applicant never turned up to report for work. A letter was received from the applicant on 16th April, 1990 which was replied by the management on 12th April, 1990 wherein he was asked to report for work. But he did not come the advice of the management and remained absent from duty of his own. Another letter was sent to him on 21st April, 1990 asking him to report for work. The applicant never opted to report for work and sent a registered envelope received by the management on 24th April, 1990 with blank papers. This was replied by the management. Subsequently a letter from Labour Inspector on 29th April, 1990 informing the Labour Inspector that the applicant be asked to report for work immediately. The applicant did not turn up to report for work and sent letter in an adamant manner. During conciliation also the contention of the applicant was to attain monetary benefits and he never preferred to report for work as such the order of reference regarding termination on abandonment is correct and is not tenable. There is no termination of services by the management of the applicant on 6th April, 1990 or on any other subsequent date. As such, no cause of action accrued to the applicant to file the demand notice under Section 2-A of the I. D. Act, 1947. The applicant is gainfully employed since he started absenting from duty of his own and out of grabe of monetary benefits of this reference petition. Hence the reference be awarded in favour of the management.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

1. Whether the workman has been terminated as alleged ? OPA.
2. Whether the workman had abandoned the job as alleged ? OPR.
3. Whether the reference is bad in law ? OPR.
4. Whether the dispute is not covered within the scope of Section 2-A of the Industrial Disputes Act, 1947 ? OPR
5. Whether the workman is gainfully employed ? If so, since when and its effect ? OPR.
5. My findings on the above issues with reasons thereof are as under :—

Issue No. 2 :

6. The workman has come into witness box as WW1 and closed the evidence. The management has examined Shri Subhash as MW1 and Shri Arjun Singh, Clerk, Labour Inspector, Bahadurgarh as MW2 and closed the evidence.

7. Shri Arjun Singh, Clerk was examined with the record and he made the statement that department has given the notice to the respondent on complaint filed by the applicant. He also made statement that the management had asked the workman to have the compensation but the workman had refused to accept the compensation. Arjun Singh further made the statement that it is wrong to suggest that workman had given complaint regarding termination of services.

8. MW1 Subhash the employee of the management and he was summoned with the record. On the basis of the record he made statement that the management had never issued any termination of the workman and the workman had never come to factory to work in the respondent factory. He also made statement that the applicant after filing the reply before Labour-cum-Conciliation Officer had not come to join the duty. However, he made statement that there was no complaint against the working of the applicant. He also made statement that management had received registered envelope which was containing blank paper, which is Ex. M3. He also made statement that if the factory is ordered it as no hesitation to take applicant on work.

9. The workman has made statement that he was not allowed to work in the factory but he made the statement that he was not allowed to work in the factory w. e. f. 6th April, 1990 but he admitted that he met officer of the factory inside the factory on 7th April, 1990. He also made statement that he was not allowed to enter inside the factory on 7th April, 1990 by the gateman and he had not mentioned it in the claim statement. He also made the statement that the factory owner had sent a letter to him to call on the duty. He do never given any letter that the management had terminated the services.

10. The learned A. R. for the management made contention that reference in question is not regarding abandonment but regarding termination and evidence of the workman examined is though regarding termination but the management never refused to workman to join the duties but the workman was not to join his duties. It is proved that management is still ready to accept the plea of the workman to join the duty then I am of view that the reference could be said to be bad.

11. For the said decision I will have to refer to the evidence examined by the parties. However, the learned A. R. for the workman has placed on record written arguments and written arguments are that as the workman was employed by the management and was allowed on 7th April, 1990 to come inside the factory by the management but the management had refused to allow him to work. On 6th April, 1990 the workman worked upto 3.00 P.M. and he was turned out of the factory by 3.30 P.M.

12. The workman had gone to the factory number of times and sent registered letters which are Ex. W-3, dated 7th April, 1990, Ex. W2 is the receipt and Ex. W3 also receipt of the complaint made to the owner of the factory and sent,—vide Ex. W-4, the management had shown the reply to the notice which the managements had asserted to have been given him the blank paper of which he had replied,—vide letter, dated 25th April, 1990. The workman had also send the registered letters. Ex. W-9 and the reply send by the workman to the management,—vide letter Ex. W-8 is dated 26th April, 1990. Besides it the workman had sent the letters dated 7th April, 1990, 9th April, 1990, 10th April, 1990, 11st April, 1990, 12nd April,

1990, 14th April, 1990 and 16th April, 1990. The workman had gone to join his duties but the gateman never allowed him to enter in the factory and had said to go to Court firstly and denied the work. The management had been informing to work but no work was given to him. The workman was not given any notice, notice pay and retrenchment compensation before or have been given the balance amount now conducted any domestic enquiry. The Haryana Government had fixed pay of Rs. 800/- of the workers. — vide notification, dated 19th October, 1989 and had demanded the said pay for the workman. Suresh Walcar, Ramswarth, Latheman, Om Parkash, Latheman but they had firstly to call of strike and get them to get right money dues. The workers has formed a union to get redressal of their complaints against the management and he is joint secretary of the union. The workman had also gone on strike and the strike continued for 14 days and the management had then removed from the factory and therefore, the workers were afraid of the management.

13. The others workers who employed after termination was were namely Om Parkash fitter. The management had stated incorrectly in a letter dated 23rd August, 1993. He should employ him but it was said so in abeyance.

14. The management had not paid him the pay of March, April alongwith bonus and remaining leaves. He has not received any reply of his letter dated 8th April, 1990 and it should be treated that management had never submitted reply of letter, dated 8th April, 1990. The management had sent a letter, dated 7th April, 1990 and not on 14th April, 1990. It is mentioned in the said memorandum that as he came at 3-00 P.M. after, therefore, he would not be taken on work. It is incorrect because the workman had gone and reached on the spot at 9.00 A. M. to do work in the factory and he was working upto 3.00 P.M. The workman was asked by the management to take his duties but the workman protested it. The workman had been going on as work of fitter from 2nd December, 1985 and the management had not got stay from the High Court on the fixation of minimum wages. The management had produced the documents which are fictitious documents and were prepared fictitiously.

15. It is wrong to allege that there is no said work in the factory and it goes on working for the whole year and the factory owner had been paying 8.33 per cent of bonus for the year 1988-89 and 19 per cent for the year 1988-89, 15 per cent of the year 1989-90 and also distributing in the year 1990-91.

16. On 22nd August, 1993 the management had said in the presence of the Labour Officer that they would not take the workman on work and they will pay him the retrenchment compensation. It shows that the workman was always and still ready to join the duties.

17. The learned A. R. for the management made submission that when the workman was turned out from factory on 6th April, 1990, how it can allow to enter into the factory and meet manager. The A. R. for the workman made the contention that the workman was told to meet him in presence of other person on 7th April, 1990 but there is no evidence on record to show that factory owner had intimated the workman to come in the factory on 7th April, 1990 to discuss the matter. It is proved that the workman had himself abandoned the job and the management not disallowed to enter in the factory. When the workman was shunt out of the company on 6th April, 1990, the management would intimate the workman to come in the factory on 7th April, 1990 particularly when nothing had happened so as to intimate the workman to talk in the factory. It is not alleged that there was no political intervention or said intervention so as to presume the workman to come in the company on 7th April, 1990 to have talked with the management.

18. If the management had not terminated the services of the workman, the reference in present position does not lie and for which reliance was made place 1984 (2) LLN, 297 (Bombay), holding that tribunal could not travel beyond the reference and decide the question whether the workman had abandoned his services of the workman and the only question whether the workman had abandoned his service of the workman and the only question left opened for decision was whether the termination was legal and proper as real dispute was not made the subject matter of the reference, the reference itself was bad and was liable to be quashed. On this subject the reference was also made to Hari Singh versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and others, cited in 1993 LLR 385, holding that the name of the petitioner/workman was struck off from the Attendance Register only on the ground that he remained absent without any intimation. Such abandonment of job by the workman amounts to termination and consequently retrenchment within the meaning of Section 2(cc) of the Act. The reference can be made to case between Panipat Coop. Sugar Mills Ltd. and Labour Court and Anr. cited in 1994 ILLJ 404, holding that the management had actually terminated the services of the respondent-workman. It is the categorical case of the management that the workman had abandoned his employment *suo motu* and that during conciliation proceedings, he had been offered employment but the workman refused to join. The Labour Court has not considered this aspect of the matter. The Labour Court has erred in holding that the contention of the management that it was a case of abandonment and not termination. The workman has been able to prove that his services has been illegally terminated. Award has to be set aside.

19. When the workman is making the statement that he had gone to the factory to join the duties time and again but he was not allowed by the management to enter in the factory premises to that effect he had referred the said letters and he did not give receipt of letter dated 8th April, 1990. It is proved that management had sent a letter dated 7th April, 1990 and not on 15th April, 1990. It is also proved that the workman had sent registered letters which are Ex. W7 to W9 and the reply sent by the workman is,— vide letter Ex. WX, dated 26th April, 1990. It is also proved that besides it the workman had sent letters dated 7th April, 1990, 8th April, 1990, 10th April, 1990, 12th April, 1990, 12th April, 1990, 14th April, 1990 and 16th April, 1990. The say of the management is that workman had been sending letters but never came to join the duty in the Factory premises and sent the letters only to create the evidence workman had gone to join his duties as the statement the workman but the gateman never allowed to him enter in the factory premises.

20. MW1 Subhash an employee of the management said that there was no completed the working of the applicant and he also made statement that the management had received a registered envelope but which was containing blank paper which is Ex. M3. After opening envelope the management could torn the written paper and could show that Court that the paper inside the envelope was blank which I am not going to believe.

21. From the evidence of the parties I am of the view that the workman had been going time and again to join his duty but the management never allowed to him. The management had asked him to have talked with the Manager. If the Manager asked him to come in the factory he was naturally not to be restrained by the gateman from going inside the factory premises. He being the Secretary of the Union as the management did not allow him, it can be believed that the management was never ready to allow him to join the duty.

22. For the reasons I hold that the workman never abandoned the job and as such I decide this issue in favour of the workman and against the management.

Issue No. 1

23. As has been proved that the workman was never allowed to join the duty but the workman was always willing to join the duties. The workman had never abandoned the job. It is as such proved that the services of the workman have been terminated and I decide this issue in favour of the workman and against the management.

Issue No. 3 to 5

24. All these issues are not pressed or argued by the parties. Hence I decide all these issues against the management.

Issue No. 6 (Relief)

25. In view of my findings on the above issues I accept the reference petition and direct the management to reinstate the workman on the job with continuity of service but with 50 per cent (FIFTY) of back wages. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

The 2nd January, 1995.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 41, dated the 13rd January, 1995.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.